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Note verbale dated 9 August 1995 from the Permanent Representative of Sri Lanka to the United Nations Office at Geneva addressed to the Chairman of the Human Rights Committee

Observations on the Committee's comments adopted following consideration of the third periodic report of Sri Lanka 1/

On behalf of the delegation of Sri Lanka to the Human Rights Committee, which presented the third periodic report of Sri Lanka on 24 and 25 July, I wish to thank the members of the Human Rights Committee for the observations they made relating to the implementation of the provisions of the International Covenant on Civil and Political Rights by Sri Lanka.

I am pleased to inform you that the concluding observations of the Committee have been submitted to the relevant authorities in Sri Lanka for follow-up action. I am confident that Sri Lanka will be able to report progress on matters referred to in the concluding observations of the Committee at the time of presenting the fourth periodic report of Sri Lanka.

As you may appreciate, during the consideration of Sri Lanka's report, my delegation furnished the members with additional information on matters on which they felt that detailed information was lacking. Thus, my delegation was able to clarify many issues of which some members of the Human Rights Committee had information made available by non-governmental sources.

1/ The third periodic report of Sri Lanka was considered at the fifty-fourth session of the Committee (1438th to 1440th meetings), held on 24 and 25 July 1995. The concluding comments of the Committee are contained in document CCPR/C/79/Add.56.

However, while perusing the concluding observations adopted by the Committee on 27 July 1995, concerning the report of Sri Lanka, it is observed that: (i) clarifications offered by the delegation on some issues have not been given due regard, and consequently the comments of the Committee appear to reflect the position taken by it prior to the oral explanations provided by the delegation, and (ii) in respect of others, there are inaccuracies, both factual and substantial.

(a) Permit me to take the liberty to illustrate my foregoing observations with some examples. First of all, I wish to refer to paragraph 8 of the concluding observations which adverts to "... the recent adoption of an Act establishing the National Human Rights Commission of Sri Lanka". In this respect, may I recall that during the presentation of Sri Lanka's report, my delegation stated that the Bill establishing the Human Rights Commission of Sri Lanka had been gazetted on 21 July 1995, and submitted a copy of the relevant gazette to the Chairman of the Committee in proof of our statement. In Sri Lanka, it is a constitutional requirement that before a Bill is adopted by Parliament, it should be published in the government gazette in order to enable any interested members of the public to contest the constitutionality of the Bill in the Supreme Court of Sri Lanka. Therefore, by publishing the Bill in the gazette, the Government has complied with a constitutional requirement, which is also procedural in nature, in that the Parliament could proceed to consider the Bill only after the publication thereof in the gazette. However, the Human Rights Committee seems to have misconstrued this step as the final adoption of the Bill by the Parliament;

(b) In paragraph 17 of the concluding observations, reference has been made to "... the undetermined detention which may be ordered by the Secretary of the Ministry of Defence ...". In this regard, I wish to reiterate the answer provided by my delegation to issue No. K under chapter II of the set of questions, submitted to the Government by the Committee in advance of the consideration of Sri Lanka's report:

"(k) <u>Detention Orders by Secretary/Defence</u>

"Prior to 16 August 1994, there was no provision for judicial review of detention orders made by Secretary/Defence. Secretary/Defence could detain a person under the provisions of this regulation for an indefinite period.

"However, with the promulgation of the new Emergency (Miscellaneous Provisions and Powers) Regulations of 16 August 1994, two important modifications were introduced, viz:

"(a) The imposition of a maximum period of detention of one year by virtue of an executive order not exceeding three months at a time;

"(b) Any further extension thereafter must be determined by a judicial order.

"The present regulation contains certain inherent safeguards. Firstly, with regard to the executive order made by Secretary/Defence, a detention order is made only after considering a report from the arresting officer

which is accompanied by an affidavit. If the grounds set out in the report are insufficient to warrant preventive detention, no detention order is made. The regulation requires that the Secretary/Defence must be satisfied upon the material submitted to him, or upon such further additional material as may be called for by him, on the existence of the grounds. There is no automaticity in the making of a detention order. The Advisory Committee appointed under ER 17 (7) carefully examines each case before making its report.

"In order to extend the period of detention beyond the maximum of one year, such persons must be produced before the magistrate, prior to the expiration of his period of detention, and be accompanied by a report from Secretary/Defence setting out:

"(a) The facts upon which the person is detained; and

"(b) The reason or reasons which necessitates the extension of such period of detention.

"The regulation requires that the magistrate must be satisfied that there are reasonable grounds for extending the period of detention. In this instance, the period of extension is limited to three months at a time, although it can be extended thereafter from time to time.

"Although the regulations do not impose a limit on the number of such renewals, what must be appreciated is the fact that a judicial mind is brought to bear on the question whether there are reasonable grounds for extending the period of detention. This is not a decision which any judicial officer would take lightly, without due regard to the rights of the affected person. Whether the regulations provide specifically for substantial judicial review, or not, the judicial officer would invariably exercise his judgement very carefully before being satisfied that there are reasonable grounds for extending the period of detention."

In view of the above, it is clear that the reference in paragraph 17 in regard to the undetermined detention is not factually correct.

(c) With regard to "the provisions of the Special Presidential Commissions of Inquiry Act, which permit the acceptance of evidence otherwise inadmissible in a court of law and which stipulate that any decision adopted by a Commission established under the Act is final and conclusive, and may not be called into question by any court and tribunal ..." (para. 21), it may be recalled that my delegation clarified this point by providing a copy of the judgement by the Supreme Court of Sri Lanka in the case of Wickrema Banda v. Herath, to the Committee, which reaffirmed the judicial precedents in Sri Lanka, whereby the courts have interpreted such language in a restrictive manner and have held that the inherent jurisdiction of the court is not ousted where an order is manifestly bad in law. The courts of law of Sri Lanka are well guarded against the use of such restrictive language and continued to interpret it in such a way as to serve the interests of justice.

(d) In equal measure, the observation of the Committee in paragraph 25, alluding to "discriminatory provisions with regard to property between men and women", is not correct in the context of the laws in force in the country. It may be recalled that, during the presentation of Sri Lanka's report, my delegation made a specific reference to the Married Women's Property Ordinance enacted as far back as 1923 which gave women equal rights with men, relating to property and contracts. On this question, the Committee appears to have confused the situation with that of Muslims in Sri Lanka who are governed by their own personal laws.

(e) Another factual inaccuracy has occurred in paragraph 38, where reference has been made to "Personal Status Act". While denying that there is a Personal Status Act in Sri Lanka, I wish to make clear that the matter referred to in that paragraph is not covered by statutory law, but by customary law applicable to the Muslim community in Sri Lanka.

I sincerely hope that the inaccuracies highlighted in the foregoing paragraphs will be rectified in the records of the Human Rights Committee, as appropriate.

(Signed): Bernard A.B. GOONETILLEKE
Ambassador
Permanent Representative